

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

H&R BLOCK EASTERN  
ENTERPRISES, INC.,

Plaintiff,

v.

JAY R. BURNS, JR. and  
J & M SECURITIES, LLC,

Defendants.

No. 05-1056-CV-W-DW

**ORDER**

Before the Court is Plaintiff's Motion to Dismiss *without prejudice* (Doc. 55). Defendants do not object to dismissal of this action but object to the form of dismissal requested by Plaintiff. Defendants argue that Plaintiff should first be required to answer certain outstanding discovery requests before the Court dismisses the action *with prejudice*.

On March 1, 2007, a telephone conference was held to discuss the discovery issue and the appropriate form of dismissal. The parties presented argument on their respective positions and assisted the Court with the unusual posture of this case. In light of the Plaintiff's previous voluntary dismissal of a state case alleging the same claims, the Court finds that dismissal with prejudice is appropriate. This decision is further justified by Plaintiff's statement that it does not intend to file a subsequent suit.

Defendants have indicated that they intend to bring a separate action for abuse of process against Plaintiff. Defendants' disputed discovery requests seek information relevant to this separate abuse of process action and not the action currently before this Court. The Court finds that discovery of this information should be resolved in that separate litigation, not here.

Finally, attorneys fees are a point of contention between the parties. Defendants state that they will seek attorneys fees in their separate abuse of process action and request the Court to defer from ruling on fees in its order of dismissal. The Court agrees that this is appropriate. As with the discovery issue, the decision regarding the allocation of attorneys fees is best left to whatever court hears that action.

Accordingly, the Court GRANTS IN PART and DENIES IN PART Plaintiff's motion to dismiss (Doc. 55) and hereby ORDERS that:

1. This action is DISMISSED *with prejudice*,
2. Defendants' request to compel discovery is DENIED,
3. The costs of this action shall be born by Plaintiff and the Court makes no ruling as to how attorneys fees shall be allocated between the parties.

Date: March 6, 2007

/S/ DEAN WHIPPLE  
Dean Whipple  
United States District Court